THE HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE MR. JUSTICE S. ANANDA REDDY

WRIT PETITION NO. 18074 OF 2005

DATED: 20-09-2005

Between

P. Venkateshwar Rao,

S/o P. Rama Rao,

Aged 40 years, Agriculturist,

R/o. Plot No. 211,

Padmavathi Colony,

Near Rly. Station, Nalgonda.

..... PETITIONER

And

1. The Deputy Commissioner of Income Tax,

Circle 9(1), Hyderabad and others.

..... RESPONDENTS

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

THE HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE MR. JUSTICE S. ANANDA REDDY

WRIT PETITION NO. 18074 OF 2005

ORDER: (per Sri B. Sudershan Reddy, J)

The petitioner invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue a writ of Mandamus declaring the proceedings initiated by respondents 1 and 2 under Section 132 of the Income Tax Act, 1961 (for short 'the Act') as illegal, bad and without jurisdiction. The petitioner also prays for a consequential direction to set aside the notice issued by the 1st respondent dated 01-06-2005 under Section 153A of the Act for the assessment years 2000-01 to 2005-06 and further direct the 1st respondent to permit the 3rd respondent – Bank to return the amounts after cancelling the demand drafts.

We do not propose to refer the facts in extenso and deal with various contentions urged by the learned counsel for the petitioner touching upon the merits of the case since any observation by this Court at this stage of the proceedings may cause avoidable prejudice to both the Department as well as the petitioner.

In order to satisfy ourselves that the proceedings under Section 132 of the Act have been properly initiated against the petitioners herein, we have required the learned senior counsel appearing for the Revenue to produce the record. We have perused the satisfactory note. The satisfactory note inter alia reveals that on specific information, the DDIT (Investigation) had undertaken investigation in the cases of applicants to IL 25 under the proposed new excise policy of the Andhra Pradesh State Government. That in the process, it has come to the knowledge that substantial unaccounted money has been used. The required information has been gathered that the petitioner has purchased as many as 26 demand drafts worth Rs.27.05 Lakhs from Nagarjuna Grameena Bank, Nalgonda without any bank account. The petitioner is not assessed to tax. It is under those circumstances, the DDIT arrived at the conclusion that the petitioner has purchased all the 26 demand drafts unaccounted. That is the basis on which the further proceedings were initiated. The Commissioner of Income Tax – VI, Hyderabad based on the material available found that prima facie the demand drafts represent unaccounted amount invested in the purchase of the drafts and the details of such income is not likely to be disclosed if notices were issued under Section 131 or 142(1) of the Act and the assets are unlikely to be produced if notices were issued under Section 131 of the Act. It is for that reason the Commissioner arrived at the prima facie conclusion that it is a fit case for invoking the provisions under Section 132A of the Act to seize the amount covered by the demand drafts.

The prima facie satisfaction arrived at by the authorities is in accordance with law. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India does not exercise any appellate jurisdiction and at this stage, it would not be appropriate to make any further detailed enquiry. We are satisfied that the respondents had definite reason to believe that it is a fit case for invoking the jurisdiction under Section 132 of the Act.

For the aforesaid reasons, we find no merit in this writ petition and the same shall accordingly stand dismissed.

However, this order shall not preclude the petitioner to file a proper application under proviso to Section 132B of the Act and if any such application is made, the same shall be considered by the respondents in accordance with law, uninfluenced by the observations if any made in this order.

(B. Sudershan Reddy, J)

20..09..2005

(S. Ananda Reddy, J)

ks